

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES BLUE,

Defendant.

NO. CR-08-092-RHW

**ORDER DENYING MOTION TO  
VACATE SENTENCE**

Before the Court is Defendant's Motion to Set Aside, Vacate, or Correct Sentence under 28 U.S.C. § 2255 (Ct. Rec. 55), heard without oral argument. Under 28 U.S.C. § 2255(b), the Court may dismiss such a motion if "the files and records of the case conclusively show that the prisoner is entitled to no relief." The Court finds that to be the case here. Defendant's Motion argues that the Court erred by failing to apply the safety valve, a claim Defendant raised on appeal that the Ninth Circuit squarely rejected (*see* Slip Opinion, Ct. Rec. 51). Defendant also argues that portions of the safety valve statute should be severed after *United States v. Booker*, 543 U.S. 220 (2005). Defendant waived this claim by failing to raise it on direct appeal, *see United States v. Ratigan*, 351 F.3d 957, 962 (9th Cir. 2003), and in any case the Ninth Circuit has previously rejected this claim, *see United States v. Hernandez-Castro*, 473 F.3d 1004, 1005-06 (9th Cir. 2007).

Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion to Set Aside, Vacate, or Correct Sentence under 28 U.S.C. § 2255 (Ct. Rec. 55) is **DENIED**.

**ORDER DENYING MOTION TO VACATE SENTENCE \* 1**

